

No. 05 - 783 DEC 15 2005

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In The
Supreme Court of the United States

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ERIC RED,

Petitioner,

vs.

NILDA ROOS; WILLA BAUM,

Respondents.

On Petition For A Writ Of Certiorari
To The Court Of Appeal Of California,
Second Appellate District

♦

PETITION FOR WRIT OF CERTIORARI

♦

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QUESTION PRESENTED

In a non-jury proceeding, a bankruptcy judge ruled that respondents' wrongful death claims against petitioner were debts "for willful and malicious injury" and were thus not dischargeable in petitioner's bankruptcy (11 U.S.C. § 523(a)(6) (2000)). Then, in a state court trial of those wrongful death claims, the trial court ruled that petitioner could not have a jury trial on the issue of his liability to respondents because of the collateral estoppel effect of the bankruptcy judge's ruling.

28 U.S.C. § 1411(a) provides that bankruptcy law "do[es] not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim." Was § 1411(a) violated by giving collateral estoppel effect to an order from a non-jury bankruptcy court proceeding so as to prevent a jury trial of the wrongful death claims?

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**PETITION FOR WRIT OF CERTIORARI
TO THE CALIFORNIA COURT OF APPEAL,
SECOND DISTRICT, DIVISION SEVEN**

Petitioner Eric Red respectfully petitions for a writ of certiorari to review the judgment of the California Court of Appeal, Second District, Division Seven, entered in this case on June 28, 2005.

Respondents Nilda Roos and Willa Baum sued petitioner Eric Red in this case for the wrongful death of respondents' adult sons, who were killed when petitioner's car crashed into a bar. Before the action was tried, petitioner filed for bankruptcy to discharge his debts. Respondents objected in the bankruptcy court to the discharge of their wrongful death claims.

"The facts surrounding the collision were hotly contested," respondents alleging that petitioner acted willfully and petitioner asserting that he was not responsible at all because he had suddenly lapsed into unconsciousness just before the accident. *In re Red*, No. 03-50642, 2004 WL 938481, at **1 (5th Cir. May 3, 2004). Following a one-day, non-jury proceeding, the bankruptcy court found for respondents, ruling that petitioner's debts to respondents were not dischargeable because they had been caused by "willful and malicious injury." See 11 U.S.C. § 523(a)(6).

After making its nondischargeability order, the bankruptcy court stated that petitioner "will now have an opportunity to convince a jury in the state of California that he was right, and obviously if he does, then that pretty much makes my decision a moot issue." Respondent Roos's lawyer similarly commented that petitioner "will be provided in [the state court action] an opportunity to present evidence in his defense. . . . Due process will be

served, and the Debtor [petitioner] will have his day in court."

The promised "opportunit[ies]" never materialized, however. Instead, the state court granted respondents' motion to preclude petitioner from contesting his liability before a jury, ruling that the bankruptcy court's nondischargeability order collaterally estopped petitioner. With liability thus established by collateral estoppel, the case proceeded to a damages-only trial that resulted in a judgment totaling over \$1,000,000.

Petitioner appealed. The state Court of Appeal affirmed in a published opinion and the state Supreme Court denied discretionary review.

The lower courts' decisions precluding petitioner from contesting his liability to respondents in this case – and from having a jury trial on liability in any forum – present "an important question of federal law that has not been, but should be, settled by this Court." Sup. Ct. R. 10(c).

A federal statute provides that bankruptcy law "do[es] not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim." 28 U.S.C. § 1411(a). This Court has called the statute "notoriously ambiguous" and said it has a "confused legislative history," *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 40 n.3 (1989), and no reported case before the state Court of Appeal's opinion here has analyzed whether the statute prevents giving collateral estoppel effect to an order from a non-jury bankruptcy proceeding so as to deny a jury trial. The need for high court guidance is clear.

The statutory construction issue is not only a compelling one, but it is also one that the Court of Appeal got wrong. The Court of Appeal said that construing the statute to prohibit giving collateral estoppel effect to the bankruptcy court ruling "at first glance . . . appears to follow logically from the language of the statute . . .," but it then rejected that interpretation. However, that is the only interpretation that gives the statute meaning.

Under the statute, the limited nondischargeability proceeding – where there was no right to a jury trial and in which the bankruptcy court did not even have jurisdiction to decide the validity of respondents' wrongful death claims – could not preempt petitioner's right to a jury trial on his liability. Giving the bankruptcy court ruling collateral estoppel effect allows bankruptcy law to "affect" – indeed, to deny altogether – petitioner's right to a jury trial regarding wrongful death claims, which the statute prohibits.

OPINIONS AND ORDERS BELOW

The judgment of the California Superior Court for the County of Los Angeles and that court's order granting respondents' motion to give collateral estoppel effect to a bankruptcy court order are not published, but they are reproduced in the appendix [hereafter App.], App. 26, 29.

The California Court of Appeal's opinion affirming the judgment is published. *Roos v. Red*, 130 Cal. App. 4th 870, 30 Cal. Rptr. 3d 446 (Ct. App. 2005). It is reproduced at App. 14.

The California Supreme Court's order denying discretionary review is not published, but it is reproduced at App. 47.

JURISDICTION

The California Court of Appeal filed its opinion on June 28, 2005. The California Supreme Court denied discretionary review on September 21, 2005. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a) (2000).

STATUTORY PROVISION INVOLVED

28 U.S.C. § 1411 provides:

(a) Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.

(b) The district court may order the issues arising under section 303 of title 11 to be tried without a jury.

STATEMENT OF THE CASE

On May 31, 2000, petitioner Eric Red's car crashed into a Santa Monica, California bar, killing two patrons –

the adult sons of respondents Nilda Roos and Willa Baum – and injuring many others. (1 CT 60; 2 CT 264.)¹

The parties agree on that much. The cause of the accident, however, is and has been – as accurately stated by the Fifth Circuit Court of Appeals in a related matter – “hotly contested.” *In re Red*, No. 03-50642, 2004 WL 938481, at **1 (5th Cir. May 3, 2004).

Petitioner was at the wheel of his car at the time of the tragedy, but he asserts that just before the incident, he had unexpectedly succumbed to syncope, a medical condition which caused him to lose consciousness.² (See 1 CT 61, 63-64; 2 CT 264.) Respondents, on the other hand, contend that petitioner was alert and that he acted willfully, and they attribute his conduct to his “depressed mental state caused by distress over personal and financial problems.” *In re Red*, 2004 WL 938481, at **1.

Respondents sued petitioner for wrongful death in California state court. (1 CT 13, 29.) Petitioner then filed for bankruptcy protection in the United States Bankruptcy Court. (1 CT 51.) Petitioner sought a discharge of his debts, i.e., an “involuntary release” by operation of law of

¹ References to “CT” and “RT” are to the clerk’s transcript and reporter’s transcript which comprised the appellate record before the California Court of Appeal.

As will be explained, the parties presented no evidence in this case about the accident, but did present some evidence in a bankruptcy court proceeding. Descriptions of the accident here come from federal court opinions concerning the bankruptcy proceeding.

² Syncope is “[a] fainting or swooning; a sudden fall of blood pressure or failure of the cardiac systole, resulting in cerebral anemia and subsequent loss of consciousness.” *Stedman’s Medical Dictionary* 1521 (25th ed. 1990).

creditors' claims *In re Dow Corning Corp.*, 255 B.R. 445, 476 (E.D. Mich. 2000).³ The bankruptcy petition filing stayed the California wrongful death action. (1 CT 47, 53.)

Respondents asked the bankruptcy court to lift the stay so that they could proceed with their state court action. (2 CT 335.) When petitioner objected (2 CT 340) and the bankruptcy court refused, respondents filed complaints in the bankruptcy proceeding (2 CT 341, 358). The complaints asked that respondents' wrongful death claims against petitioner not be discharged in bankruptcy. (2 CT 343, 361-362.) They asserted that the claims were debts "for willful and malicious injury by the debtor," which are not dischargeable. 11 U.S.C. § 523(a)(6).

In a non-jury trial, the bankruptcy court heard one day of evidence and then ruled for respondents. (1 CT 77.) The court concluded that the accident happened this way:

"Mr. Red was conscious and alert and intentionally jammed his foot onto the accelerator pushing the car in front of him out of the way, . . . his car then slipped off the car in front of him after it was well into the intersection, veered to the left, crashed through the front doors of the billiard pub at a speed approaching 35 mph, crashed into the bar where it stopped after it had killed two people – and . . . all of this occurred because of a fit of uncontrollable rage on the part of Mr. Red, the reason for the rage being largely unknown."

(App. 44; 1 CT 75-76.)

³ This Court "on numerous occasions has stated that '[o]ne of the primary purposes of the Bankruptcy Act' is to give debtors 'a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.'" *Perez v. Campbell*, 402 U.S. 637, 648 (1971).